



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,718	04/21/1999	STEVEN M. BLUMENAU	EO295/7087/R	7529

7590 05/27/2003

ROBERT PLOTKIN
C/O WOLF GREENFIELD & SACKS PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 022102211

EXAMINER

WILLETT, STEPHAN F

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 05/27/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
09/295,718Applicant(s)
Blumenau et al.Examiner
Stephan WillettArt Unit
2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 7, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 34-50, and 62-77 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 34-50, and 62-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2141

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 1, 7-8, 10-11, 34-38, 41, 43, 62, 69, 71 are rejected under 35 U.S.C. 102(e) as being anticipated by Cannon et al. with Patent Number 6,167,408

3. Regarding claim(s) 1, 34, 62, Cannon teaches updating code and configuration information for distributed applications. Cannon teaches storing first configuration information as to how to access a computer resource, col. 14, lines 23-24. Cannon teaches determining a second access configuration, col. 14, lines 33-35. Cannon teaches comparing the two configurations for differences, col. 16, lines 29-33 and changes are reported. Cannon teaches applying the second configuration when it differs from the older configuration, col. 17, lines 47-50. Cannon teaches differing manners of accessing a resource, col. 6, lines 9-11. Cannon teaches identifiers to enable access to a resource, Table 2. Therefore, by the above rational, the above claim(s) are rejected.

4. Regarding claims 2-3, 35-36, 63, Cannon teaches rebooting as part of the reconfiguration process, col. 10,2-3.

5. Regarding claims 7-8, 10-12, 37-38, 41, 43, 64-65, 68, 70, Cannon teaches more

Art Unit: 2141

identifiers to enable access to a resource, Table 2.

Claim Rejections - 35 USC § 103

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

lines 2-3. Thus, the above claim limitations are obvious in view of the combination.

8. Claims 14, 45, 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al. with Patent Number 6,167,408 in view of DeKoning et al. with Patent Number 6,178,520.

9. Regarding claim(s) 14, 45, 72, teaches updating code and configuration information for distributed applications. Cannon teaches storing first configuration information as to how to access a computer resource, col. 14, lines 23-24. Cannon teaches determining a second access configuration, col. 14, lines 33-35. Cannon teaches comparing the two configurations for

Art Unit: 2141

differences, col. 16, lines 29-33 and changes are reported. Cannon teaches applying the second configuration when it differs from the older configuration, col. 17, lines 47-50. Cannon teaches differing manners of accessing a resource, col. 6, lines 9-11. Cannon teaches identifiers to enable access to a resource, Table 2. Cannon teaches the invention in the above claim(s) except for explicitly teaching a configuration manner without reinitializing. In that Cannon operates to reconfigure data access updates, the artisan would have looked to the system configuration and reconfiguration arts for details of implementing access to resources. In that art, DeKoning, a related network updating system, teaches "mapping functions", col. 7, lines 11-12 in order to provide efficient updates. DeKoning specifically teaches "hot-swap monitor", col. 8, lines 1-2. Clearly, reinitialization is not required. Further, DeKoning suggests "I/O requests are translated into appropriate block transfer requests", col. 7, lines 19-20 which will result from implementing his hot-swap. The motivation to incorporate a hot-swap insures that the system is not interrupted. Thus, it would have been obvious to one of ordinary skill in the art to incorporate a hot swap as taught in DeKoning into the upgradable system described in the Cannon patent because Cannon operates with methods to access resources in a distributed system and DeKoning suggests that optimization can be obtained with a hot-swap. Therefore, by the above rational, the above claim(s) are rejected.

10. Claims 1-20, 34-50 and 62-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma et al. with Patent Number 5,920,725 in view of Ha with Patent Number 6,175,919.

11. Regarding claim(s) 1, 34, 62, Ma teaches updating code and configuration information for

Art Unit: 2141

distributed applications. Ma teaches storing first configuration information as to how to access a computer resource, col. 7, lines 6-13. Ma teaches determining a second access configuration, col. 7, lines 15-18. Ma teaches comparing the two configurations for differences as "some of the existing object instances now no longer match their modified object class definitions", col. 7, lines 19-20 and changes are reported. Ma teaches applying the second configuration when it differs from the older configuration, col. 7, lines 47-50. Ma teaches differing manners of accessing a resource, col. 9-10, lines 66-4. Ma teaches identifiers to enable access to a resource, col. 13-14, lines 62-23. Ma teaches the invention in the above claim(s) except for explicitly teaching a configuration manner to access a resource. In that Ma operates to reconfigure data access updates, the artisan would have looked to the system configuration and reconfiguration arts for details of implementing access to resources. In that art, Ha, a related network updating system, teaches a "BIOS upgrade system", col. 4, lines 6 in order to provide efficient updates. Ha specifically teaches "basic input-output system (BIOS)", col. 1, lines 16-17. Clearly, the manner of accessing a resource is taught. Further, Ha suggests "it is possible to save time and to collectively upgrade the BIO's of a plurality of computers", col. 5, lines 27-28 which will result from implementing his upgrading system. The motivation to incorporate different methods to access a resource insures that a diverse distributed computer network system is supported. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the BIOS accessing method as taught in Ha into the upgradable system described in the Ma patent because Ma operates with methods to access mobile objects in a distributed system and Ha suggests that optimization can be obtained with access methods. Therefore, by the above rational, the above

Art Unit: 2141

claim(s) are rejected.

12. Regarding claims 2-3, 35-36, 63, Ha teaches rebooting as part of the reconfiguration process, col. 5, lines 23-24. Thus, the above claim limitations are obvious in view of the combination.

13. Regarding claims 4, 6, 12, 37-38, 64-65, 68, 70, Ma teaches storing component information to identify a resource and configuration information, col. 8, lines 20-21. Thus, the above claim limitations are obvious in view of the combination.

14. Regarding claims 5, 39, 66, Ma teaches volumes of data associated with each resource, col. 8, lines 1-6 and in Ha at col. 4, lines 9-10. Thus, the above claim limitations are obvious in view of the combination.

15. Regarding claims 7-8, 10-11, 41, 43, 68, Ma teaches more identifiers to enable access to a resource, col. 13-14, lines 62-23..

16. Regarding claims 9, 40, 67, Ma teaches path or links to information, col. 8, lines 6-8. Thus, the above claim limitations are obvious in view of the combination.

17. Regarding claims 13, 42, 44, 69, 71, 74, Ma teaches querying or sending lists of changed information, col. 8, lines 10-14. Thus, the above claim limitations are obvious in view of the combination.

18. Regarding claims 14, 45, 72, Ma teaches updating without reinitializing, col. 8, lines 7-9, 18-19 and col. 15, lines 14-15. Thus, the above claim limitations are obvious in view of the combination.

19. Regarding claims 15, Ma teaches suspending operations in form, col. 7, lines 26-34.

Art Unit: 2141

Thus, the above claim limitations are obvious in view of the combination.

20. Regarding claims 16-17, 46-47, 73, Ma teaches a mapping entity to each resource as class updates, col. 10, lines 45-56. Thus, the above claim limitations are obvious in view of the combination.

21. Regarding claims 18, 48, 75, Ha teaches updating via ports, Fig. 4 and as via a MUX, col. 4, lines 30-32. Thus, the above claim limitations are obvious in view of the combination.

22. Regarding claims 19, 49, 76, Ma teaches using different connection to access database information, col. 8, lines 25-27. Thus, the above claim limitations are obvious in view of the combination.

23. Regarding claims 20, 50, 77, Ma teaches moving configuration data from one storage location to another, col. 11, lines 4-6. Thus, the above claim limitations are obvious in view of the combination.

Response to Amendment

24. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected, however, excellent summary for perspective.

25. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

26. Applicant suggests the Ma and Ha combination "would have frustrated the express teachings of Ma that the updating of the application be performed without re-initialization", Paper No. 10, Page 4, lines 1-2. The references should not be read in a vacuum, the teachings are

Art Unit: 2141

not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. As the new references highlight and as in applicant's claims, configuration checks are expected upon rebooting and a common approach as taught is to reconfigure without re-initializing. Also, Ma teaches updating without reinitializing, col. 15, lines 14-15. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

27. Applicant suggests "that the computer system need not do any comparison", Paper No. 10, Page 5, line 13. This argument highlights the breadth of the claims since the claims do not require a "computer system" do the comparing, not that such a comparison would not be inherent in any code updating scenario as taught by "once a user had finished defining the changes", col 7, lines 13-14 in Ma. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

28. Applicant suggests "updating the database application ... does not alter the manner the database ... accesses a computer system resources", Paper No. 10, Page 5, line 23-26. The references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. For example, Ma teaches "more complex changes such as adding a new routine require pasting program code", col. 7, lines 9-10, and objects are not just data in a database but "the reference count indicates the number of other objects that are currently

Art Unit: 2141

communicating with the object”, col. 7, lines 32-34 but objects define a configuration to access other objects and data. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

29. Applicant suggests “the Office Action does not explain how all the limitations in the claim are met by the prior art”, Paper No. 10, Page 7, lines 5-6. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference. Ma teaches updating without reinitializing, col. 15, lines 14-15.. Thus, Applicant’s arguments can not be held as persuasive regarding patentability

Art Unit: 2141

Conclusion

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the Rathunde and Schultz et al. references with Patent Numbers 5,574,851 and 6,058,489 is suggested. The other references cited teach numerous other ways to perform version code comparisons and updates, especially with RAID, thus a close review of them is suggested.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

33. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.



Stephan Willett

Patent Examiner

May 12, 2003